



8 April 2021

Committee Secretary

Senate Standing Committees on Environment and Communications

PO Box 6100

Parliament House

Canberra ACT 2600

By email only: ec.sen@aph.gov.au

Submission to the Senate Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021.

Dear Committee,

BirdLife Australia welcomes the opportunity to participate in this Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021 (the Bill).

BirdLife Australia is an independent non-partisan grassroots charity with over 200,000 supporters throughout Australia. Our primary objective is to conserve and protect Australia's native birds and their habitat. Our organisation is the national partner of BirdLife International, the world's largest conservation partnership.

BirdLife Australia has played a major role in the conservation and monitoring of Australia's bird life throughout our almost 120-year history. We have invested in long-term threatened bird conservation programs, often in partnership with other organisations and communities, bringing together research, education, on-ground remediation, advocacy and campaigning. The organisation relies on thousands of volunteers and citizen scientists who play a key role in delivering our bird conservation programs.

Our core programs adopt a long-term, multi-species and landscape scale approach to conservation for Coastal Birds, Woodland Birds, Mallee Birds and others. Our Key Biodiversity Areas program does the same for sites of recognised global importance for birds and biodiversity more broadly. Our Preventing Extinctions program focuses on threatened birds that are most likely to become extinct and require leadership from BirdLife Australia.

BirdLife Australia
Suite 2-05
60 Leicester Street
Carlton VIC 3053
T 03 9347 0757
F 03 9347 9323
info@birdlife.org.au
birdlife.org.au

ABN 75 149 124 774

Supporting the environment
100% Recycled paper



BirdLife Australia agrees with the Final Report of the Independent Review (the Final Report) of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), the primary national law tasked with protecting Australian birds and the environment has not succeeded in meeting its objective and must be reformed. While BirdLife Australia does not support the entirety of the Final Report's 38 wide ranging recommendations, including the recommendations to devolve environmental approval powers to State Governments and to largely replace species recovery plans with regional recovery plans we do believe the Final Report sets a framework to overhaul and strengthen the EPBC Act. However, we are disappointed that the Government has decided to "cherry pick from a highly interconnected suite of recommendations¹," ignoring a specific caution from Professor Samuel, when developing the reforms proposed under the Bill.

We hold serious concerns that without significant legislative and policy changes the Bill together with the EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 will lock in limitations and inadequacies in the EPBC Act that will almost certainly lead to further declines in environmental outcomes and extinctions.

In relation to the content of the Bill itself, BirdLife holds a number of significant concerns outlined in the following submission.

A key concern is the inadequacy of the National Environmental Standards proposed in the bill, which as they stand, will not deliver the environmental protections we need to arrest the species extinction crisis. While they represent a compromise, the Standards outlined in Professor Graeme Samuel's report represent a much better starting point and would improve current protections. However, the Standards proposed in the Samuel report and those in the Bill do not cover all elements of environmental management, and it is not clear whether the standards are to apply at a regional or project level. To this end, BirdLife Australia has developed an additional National Environmental Standard on Bioregional Planning as part of our submission.

BirdLife Australia encourages the Senate Standing Committee on Environment to reject the Bill and urge the Government to develop a new bill that must include strong, enforceable National Environmental Standards and an Independent Regulator.

BirdLife Australia has a unique perspective on the reforms required for effective legislation to protect Australia's threatened species and would welcome the opportunity to present this perspective as a witness during any upcoming public hearings.

¹ <https://epbactreview.environment.gov.au/resources/final-report/recommendations>



Should you have any questions or require more information please contact
Erin Farley, BirdLife Australia Campaigns Manager, on [redacted] or [redacted]

Yours sincerely,

Paul Sullivan
Chief Executive Officer
BirdLife Australia



Submission:

National environmental standards

BirdLife Australia believes strong, enforceable standards, codified in law to ensure they are applied, should be the foundation of any national environmental law reform. Standards should be granular and measurable, providing flexibility for development, and should have clear requirements around the quality, consistency and comprehensive application of these standards. Finally, standards should be informed by public consultation and independent statutory scientific committees.

The Final Report proposed detailed, outcome focused standards that were developed through extensive consultation with all stakeholders and Professor Samuel recommended that they should be “accepted in full, and other necessary Standards should be developed and implemented without delay.” However, these standards were ignored and replaced with “interim standards” developed by the Government without consultation or public scrutiny. These “interim standards” are poorly defined, do not describe environmental outcomes and replicate existing problems with the EPBC Act including ministerial discretion and exemptions.

Recommendations:

Any proposed interim standards must contain explicit environmental outcomes and must be reviewed by the Parliament in the form of a disallowable instrument. BirdLife Australia recommends the standards put forward in the Final Report form the basis of these standards.

Consistent with the final report, additional standards must be urgently developed to support immediate reforms to enable regional planning, strengthened compliance and enforcement, dramatically improved Indigenous consultation, and the development of the data & information proposal as prerequisites for entering into further dialogue with state and territory governments.

BirdLife Australia has developed a Bioregional Planning standard to this effect – see below.

Schedule 1 of the Bill should be strengthened to:

- Require that national environmental standards must be made for the following matters: matters of national environmental significance, Indigenous participation and engagement, compliance and enforcement, and data and information.
- The Bill should stipulate a non-exhaustive list of standards that must be made that, as a minimum, must include those recommended in the Final Report.
- Require bilateral agreements, decisions or things under the Act to be consistent with national environmental standards.
- Specify in legislation the processes to which national environmental standards will be applied, including to individual projects and actions.



- Clarify the list of considerations relevant to a determination of consistency with standards (ie, to focus on the standards being demonstrably and directly applied, rather than broadly applied in conjunction with other environmental measures).
- Define the public interest and require the Minister's statement of reasons to include the environmental implications of applying a public interest exemption.
- Require reviews of standards to be conducted by Independent scientific experts and require the Minister to respond publicly to reviews.

Bioregional planning

Bioregional Planning is an underutilised tool that can be used to proactively identify and protect nationally significant areas such as critical habitat. They can be used to consult on priorities for investment and integrate plans and instruments applicable to the bioregion. Bioregional plans should guide implementation, rather than replace, recovery plans which detail threats and plan the specific interventions needed for threatened species conservation.

Bioregional planning provisions should be strengthened to allow the Commonwealth to identify 'no go zones' where development cannot occur, and a requirement that decision-makers must give effect to bioregional plans.

Bioregional planning could provide for a process of deep engagement with stakeholders, including Indigenous groups. The plans could identify priorities for investment and integrate plans applicable to the bioregion (e.g., recovery and threat abatement, management plans for reserves, Ramsar sites), as well as explore culturally appropriate governance models for Indigenous Protected Areas (IPAs) and co-managed areas.

It is important to emphasise that bioregional planning processes should be used as mechanisms to consult with community and identify priorities. They should not be used to provide blanket approval for activities over regions. We have seen the downfalls of this approach through poorly conducted strategic assessment processes.

Current strategic impact assessments allow the Commonwealth and State Governments to conduct environmental impact assessments at a larger scale than individual project assessments, and for assessment of cumulative impacts from particular activities. However, there is also a significant risk that strategic assessments, like Regional Forest Agreements, can lock in perverse outcomes. This includes establishing an authorizing environment that lacks flexibility should environmental conditions change significantly (e.g. the 2019/20 fires) or when new information indicates that the assessment permits actions detrimental to MNES or the health of the environment.



National Recovery Plans

It is also important to note that the implementation of strong National Environmental Standards cannot replace well-funded Recovery Planning for species at risk of extinction.

When the current Act was first passed into law, the listing of a species as nationally threatened triggered a legal requirement for the development of a National Recovery Plan; a document that captures current understanding of how present and past threats contributed to the species' decline and the key actions needed to recover the species. While such plans are not directly enforceable, a strong plan can impose measures to help protect a species, for example by identifying areas of critical habitat that must be protected, specifying limits to loss or specifying clear, time-bound management objectives for a species and its habitat.

Importantly, the Environment Minister cannot approve an action that is inconsistent with a Recovery Plan.

It is clear that the current Recovery Planning system is not working well. Over time, Recovery Plans have become increasingly insipid and as the lists of threatened species have grown, funding for the development and implementation of Plans has declined. Today, most listed species don't have Recovery Plans. For those that do, Recovery Plans were mostly drafted long ago and have not been updated within the required five-year time frame.

However, these problems are indicative of the lack of dedicated funding, not the approach. The [ACF-BLA-EJA Recovery Planning Report](#) clearly demonstrates that the resources currently allocated to the protection of Australia's threatened species are a small fraction of what is required to improve the conservation status of the species most in need and prevent their extinction.

Diminishing levels of government investment and constant changes to funding streams and priorities are a major impediment to species' recovery. The past two decades have seen numerous national conservation funding programs (e.g. Natural Heritage Trust, Caring for our Country, National Landcare Program), each with different levels of funding, timeframes and priorities. As a result, continuity in operation for long-term programs and recovery teams is hard, and always below levels required. The programs are also regularly over-subscribed and require at least an order of magnitude increase in funding to deliver stated objectives.

All this is despite findings that threatened bird conservation has broad support from the Australian public: threatened birds are valued as a group, not just particular species with which people might have a strong affinity. Conservatively, Zander et al. (2014)² found that Australians would be willing to pay about \$14 million per year, and realistically about \$70 million into a conservation fund for threatened Australian birds.

² Zander et al. (2014) Threatened Bird Valuation in Australia. PLoS ONE 9(6): e100411. <https://doi.org/10.1371/journal.pone.0100411>



When properly resourced, Recovery Plans are one of the simplest and most direct ways to arrest the extinction crisis in Australia. Research suggests that most recovery plans could be implemented with a modest investment. Studies completed in 2009³ highlighted that 50 per cent of recovery plans could be implemented for less than \$200,000, with only 16 plans exceeding the \$1 million mark. When looked at in total, these costs average out to approximately \$100,000 per annum per recovery plan. Similarly, McCarthy et al. (2008) estimated that for just \$10 million annually all Australia's bird species could be secured from extinction⁴.

Recommendations:

BirdLife Australia recommends any legislative reform to the EPBC Act must mandate implementation of Recovery Plans that must provide unambiguous and appropriate prescriptions to prevent the cumulative loss of important and critical habitat, consistent with best available science.

Mandated Recovery Plans would require:

- An Independent Scientific Committee responsible for considering and listing threatened species, important populations, ecological communities, key threatening processes and areas of global or national importance, assisted by experts as required.
- The Scientific Committee have the power to list threatened and protected matters directly based on scientific evidence. Listings must continue to be on scientific grounds only and must not be subject to a disallowance motion by politicians.
- Listing processes to be simpler, faster, more accountable and better resourced. All valid nominations for listing must be assessed within three years of nomination. The Act should require the Minister to ensure statutory assessment and listing periods are met. Listing outcomes and timeframes would be monitored and reported on publicly.
- Nomination, consultation and listing processes must be accessible to the community. Public nomination and participation should be encouraged. The Committee should be expected to prepare their own nominations to keep the lists up to date. The listing process must be scientifically rigorous but not administratively onerous, with clear stages to meet or exceed mandatory timeframes.
- The Scientific Committee and its staff must be well-resourced for efficient and effective listing, in accordance with ministerial duties.
- Mandatory development of Recovery Plans for threatened species or ecological community including detailed recovery goals, actions, estimated timeframes to achieve goals and milestones, and metrics

³ Ortega-Argueta, A., 2009. Evaluating recovery planning for threatened species in Australia. University of Queensland.
http://espace.library.uq.edu.au/view/UQ:178617/s40668237_PhD_totalthesis.pdf

⁴ McCarthy et al. (2008) Optimal investment in conservation of species. *Journal of Applied Ecology* 45(5) <https://doi.org/10.1111/j.1365-2664.2008.01521.x>



- to measure progress. Multi-species plans would be encouraged where this is efficient, cost effective and scientifically sound.
- Recovery plan instruments must be continually in force not simply expire after a period. The Minister must have duty to ensure Recovery Plans are in place, being implemented, and to review and update Recovery Plans at least once every 10 years.
 - Robust guidelines governing the preparation of Recovery Plans must ensure Plans detail scientifically robust, specific, measurable and targeted restraints on the destruction of threatened species habitat and outline restorative outcomes that any approval decisions must work toward.
 - Investment of \$200 million a year to establish a threatened species recovery fund that invests directly in recovery plan implementation and strategic priority recovery actions for Australia's most threatened species, leveraging partnerships with civil society.
 - Investment of at least \$170 million per year for the strategic growth of the National Reserve System, informed by Key Biodiversity Areas;
 - providing grants to public and private partners to purchase land for new protected areas;
 - establish and manage Indigenous Protected Areas (IPAs); and
 - establish and manage private land conservation covenants to protect identified priority habitat, informed by species recovery plans.
 - Guaranteed expenditure for the length of time needed to make a measurable difference, albeit with sufficient oversight to allow adaptation to new circumstances.
 - Monitoring and evaluation of measurable impacts of interventions (see below) so that expenditure is accountable and spent on priority actions that have the most impact.
 - Effective monitoring as part of National Recovery Plans requires:
 - A dedicated section on long-term monitoring requirements (including resourcing) in each Plan
 - For each Plan to spell out the design and the statistical strength expected of the species monitoring Plan, including the relevance of the monitoring and how it is linked to management.
 - Management decisions to be made under a "best available science" standard that encourages iterative scientific updating while limiting the influence of contrary economic and political interests.
 - Data from monitoring of publicly funded threatened species conservation projects to be made publicly available (or in the case of sensitive species available to qualified recovery stakeholders) within a defined, short, period after collection. Reporting should also include data from all regulatory approvals that include monitoring as a condition of approval.
 - To be regularly audited so that progress is publicly reported.



Environment Assurance Commissioner (EAC)

Historically, compliance with the EPBC Act has been poorly monitored and enforced. Conditions imposed on developments are often difficult to monitor, do not provide adequate data regarding the impacts (or planned controlling provisions) on threatened species likely to be affected, and do not have adequate safeguards if developments exceed stated impact thresholds after approval.

Strong, enforceable National Environmental Standards, as detailed above, coupled with an independent national compliance and enforcement regulator would be a welcome first step towards effective environmental legislative reform.

While BirdLife Australia generally welcomes the proposed establishment of an Environmental Assurance Commissioner, that would perform general audit functions, we have serious concerns about the limited responsibilities of the position and how it would operate.

As proposed the Commissioner position would perform general audit functions focused primarily on bilateral agreement implementation and would be unable to audit individual approvals and assessments. Further, the Commissioner's ability for responsive, targeted compliance and enforcement oversight is limited. The Commissioner is a long way from an independent Environment Protection Authority model which BirdLife Australia and other national environment NGOs recommend.

Finally, there is no national compliance and enforcement standard proposed in association with this Bill, despite the Final Report stipulating this as critical to ensure a consistent approach to implementing standards and a precondition to any accredited arrangements.

Recommendations:

BirdLife Australia recommends the establishment of an independent regulator that operates at arm's length from government to conduct transparent environmental assessments and inquiries, as well as undertake monitoring, compliance and enforcement actions.

If, however the EAC model is pursued Schedule 2 should be strengthened by:

- Deleting the limit on monitoring and auditing individual decisions and actions;
- Clarifying powers to compel production of information;
- Requiring the Minister to publicly respond to audit reports; and
- Requiring a mandatory compliance and enforcement standard be developed as a precondition to any accreditation or devolution.



Attachments:

[Draft National Standard for Bioregional Planning](#)

[BirdLife Australia's Submission to the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999.](#)

[BirdLife Australia's Submission to the Senate Inquiry into the EPBC Amendment \(Streamlining Environmental Approvals\) Bill 2020.](#)

[BirdLife Australia's Submission to the Environment and Communications References Committee for inquiry on Australia's faunal extinction crisis.](#)



Draft National Standard for Bioregional Planning

Element	Description
Introduction	<p>Bioregional planning presents a consolidated picture of the biophysical characteristics and biodiversity at a regional or landscape scale. Bioregional plans describe the environment and conservation values of the region, set out biodiversity objectives, identify regional priorities and outline strategies and actions to address those priorities.</p> <p>A bioregional plan should include information and provisions about:</p> <ol style="list-style-type: none"> 1. the components of biodiversity, their distribution and conservation status; 2. important economic and social values; 3. heritage and Indigenous values of places; 4. objectives relating to biodiversity and other values; 5. priorities, strategies and actions to achieve the objectives; 6. mechanisms for community involvement in implementing the plan; 7. measures for monitoring and reviewing the plan.
Environmental Outcome	<p>Bioregional plans establish agreed outcome-based regional objectives in relation to environmental, social, cultural and economic considerations which protect and enhance the environment, including MNES; and decision-making based on those plans actively contributes to improvements in the management of the environment at a regional or landscape scale.</p>
National Standard	<ol style="list-style-type: none"> 1. Bioregional plans (and policies, actions and decisions arising from them) are consistent with the overarching MNES Standard, relevant matter-specific Standards and all other National Environmental Standards. 2. Bioregional plans (and policies, actions and decisions arising from them) are consistent with the objects of the EPBC Act and the principles of ecologically sustainable development (including the precautionary principle) and reflect a principle of non-regression. 3. Bioregional plans (and policies, actions and decisions arising from them) maintain and improve conservation, recovery and sustainable management of the region, prevent detrimental cumulative impacts and key threatening processes and seek to fill information gaps that impede recovery and appropriate management.



Element	Description
	<ol style="list-style-type: none"> 4. Bioregional plans are developed using expertise from diverse scientific disciplines and knowledge systems. 5. Bioregional plans are co-designed with stakeholders using participatory planning practices which identify all areas important to the community from an environmental, social, cultural or Indigenous perspective and potential threats to those areas. 6. Bioregional plans are co-designed with stakeholders using participatory planning practices which identify areas that could be available for the long-term economic development of the region. 7. Bioregional plans are consistent with, and provide for, implementation of all relevant actions set out in other environmental plans or policies under the EPBC Act. 8. Bioregional plans map important habitat for environmental and cultural protection, including habitat critical to threatened species, as well as identify opportunities for broadscale investment in restoration. 9. Bioregional plans identify key sites for developments and allowed actions designed to ensure net benefits for MNES and ecosystem services, taking into account the cumulative impacts of multiple activities and the need for achievable and ecologically feasible offsets as a last resort. 10. Bioregional plans identify areas where, for significant environmental, social or cultural reasons, future development should be precluded. 11. Bioregional plans are based on the best available information, with the support of the best available decision support tools. Data and information should be stored and shared consistent with best practice data and information management. 12. Monitoring, reporting and evaluation of bioregional plans demonstrate compliance with National Environmental Standards.
<p>Monitoring and Reporting</p>	<p>Each bioregional plan clearly establishes the outcomes it seeks to achieve and the way progress will be measured. Monitoring, reporting and evaluation of those outcomes are designed according to Data and Information, and Monitoring and Evaluation National Standards to assess:</p> <ol style="list-style-type: none"> 1. whether intended outcomes are being delivered, 2. whether key information gaps identified during plan development are being filled, 3. whether MNES monitoring shows improvements in conservation, recovery and sustainable management of the region, and



Element	Description
	4. whether actions are being taken to improve plans through the five-yearly review.
Review	This National Environmental Standard should be reviewed following the development of the first Bioregional Plan and, thereafter, at least on a five-yearly cycle. Any review should be made publicly available in full.

Definitions

Bioregional plan: see section 176 of the EPBC Act.

Objects of the EPBC Act: see section 3 of the EPBC Act.

Principles of ecologically sustainable development (including the precautionary principle): see section 3A of the EPBC Act.

Principle of non-regression: this principle seeks to ensure the overall protection of the environment is not diminished over time. It is consistent with the principles of ecologically sustainable development, the *EPBC Act Environmental Offsets Policy* (2012, as updated from time to time) and the Australian Government commitment to maintain environmental protections.

Cumulative impacts: the collective impacts from all actions, decisions, plans, policies and other pressures, past, present and likely future, measured against a stipulated baseline. See *Significant Impact Guidelines 1.2* (2013), *Significant Impact Guidelines 1.3* (2013) and *Reef 2050 Plan: Cumulative Impact Management Policy* (2018) for further explanation of the concept of cumulative impacts.

Key threatening processes: threatening processes included in the list referred to in section 183 of the EPBC Act.

Environmental plans or policies under the EPBC Act which bioregional plans must be consistent with: include:

- Conservation advice prepared in accordance with section 266B(2) of the EPBC Act,
- Recovery plans prepared in accordance with sections 269(2) or 269(3) of the EPBC Act,
- Threat abatement plans prepared in accordance with sections 270(2) or 270(3) of the EPBC Act, and
- Wildlife conservation plans prepared in accordance with section 285(1) of the EPBC Act.

Offsets: measures that may be used once it has been demonstrated that all reasonable steps have been taken to avoid and minimise impacts, that are provided to compensate, repair or replace an impacted value, including changes to the integrity, quality, condition and/or extent of habitat. Offsets



must be consistent with the *EPBC Act Environmental Offsets Policy* (2012, as updated from time to time), or an accredited policy relating to offsets of a state or territory. Offsets must be achievable and ecologically feasible:

- An offset is achievable where demonstrated scientific knowledge exists on how to restore the habitat with a high confidence of success, and its long-term protection is assured (for example through conservation covenants or conservation agreements), and
- An offset is ecologically feasible where it can be demonstrated that the species or community can be reliably restored in a timeframe proportionate to effectively address the impact of the action and enough space exists to undertake restoration (not ecologically or tenure constrained).

Best available information: the best and most up-to-date environmental, social, cultural and economic data that provide important context for appropriate planning. This data may be obtained through research, monitoring and/or conservation action implemented as part of statutory plans, or as a result of population or habitat impacts which arise from unexpected events that change a species' situation in the wild – for example, wildfires, disease outbreaks, drought, cyclones or contamination events.